



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Park Purchase and Construction Agreement with FCB Building Partners I, LP, for the Acquisition of the Park Site and Construction of the Park Improvements for Century Meadows Park and Appropriate Funds (\$24,000)

MEETING DATE: November 3, 2004

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the City Manager to execute the park purchase and construction agreement with FCB Building Partners I, LP, for the acquisition of the park site and construction of the park improvements for Century Meadows Park.

BACKGROUND INFORMATION: On December 18, 2002, the City of Lodi and FCB Building Partners I, LP, entered into an improvement agreement for the Century Meadows Two, Unit No. 4, Tract No. 3272, subdivision. A planned neighborhood park site that is in substantial conformance with the adopted City of Lodi Parks and Recreation Open Space Master Plan (1994) is located within this subdivision. A copy of the Century Meadows Park site layout is provided in Attachment A. All public improvements for this subdivision have not yet been accepted by the City Council.

On December 18, 2002, the City of Lodi and FCB Building Partners I, LP, also entered into a Park Acquisition Agreement reserving the park parcel for future acquisition by the City. Under the terms of this agreement, the parcel must be purchased within two years after completion and acceptance of all public improvements. The purchase price shall be the market value as of August 22, 2001, (date of approval of the vesting tentative map) plus the accumulated costs for property taxes, maintenance, and loan interest.

The Park Purchase and Acquisition Agreement (Attachment B) will provide for acquisition of the park site and the constructed improvements from the developer, for the most part by issuing Parks and Recreation Impact Mitigation Fee credits. A summary of the expected project costs including land, construction, construction administration, and escrow fees, along with the developer's cost of the land, is presented in Attachment C.

The price for the land on August 22, 2001, is the developer's cost of the land, \$150,000 per acre. Based upon the criteria for determining the total land value, the total purchase price of the 2.99-acre park site is \$551,963. The carry period of the land is 3 years. The assumed property tax rate is 1% per year. The interest rate is 5.25%. An itemization of the costs comprising the purchase price is provided in Attachment C, Summary of Costs.

The developer is currently building three subdivisions in the vicinity of Century Meadows Park, comprising 277 homes that collectively will generate \$1,016,553 in Parks and Recreation Impact

APPROVED:


Janet S. Keeter, Interim City Manager

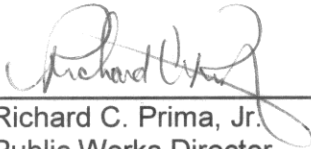
Mitigation Fees (IMF). This agreement would effectively issue fee credits to the developer in exchange for delivery of the improved park site and construction of the park improvements. Under the terms of the agreement, the developer is responsible for construction administration costs, with no reimbursement from the City. It is expected that an additional \$24,000 is required from the Parks and Recreation IMF fund over and above the \$1,016,553 in fee credits in order to complete the project.

Construction of the park improvements is scheduled to immediately begin and is expected to conclude in April 2005. At that time, the agreement commits the developer, at the developer's cost, to an extended maintenance period through December 2005.

We recommend that the City Council authorize the City Manager to sign the agreement and appropriate funds necessary to complete the purchase and construction.

FUNDING: Parks and Recreation Impact Mitigation Fee Fund (\$24,000)

James R. Krueger, Finance Director



Richard C. Prima, Jr.
Public Works Director

Prepared by F. Wally Sandelin, City Engineer

RCP/FWS/pmf

Attachments

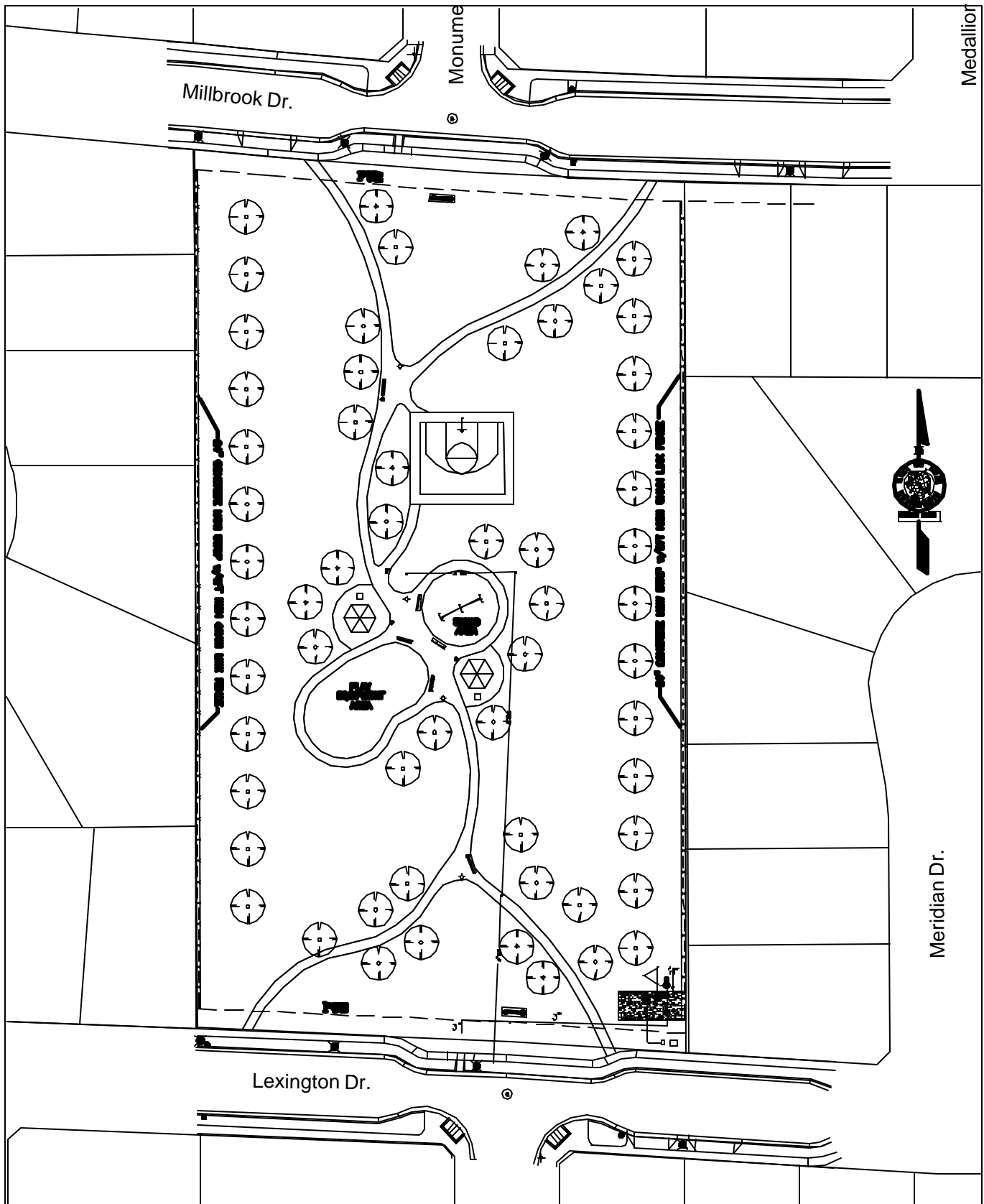
cc: FCB Building Partners, I, LP



CITY OF LODI

PUBLIC WORKS DEPARTMENT

CENTURY MEADOWS PARK ATTACHMENT A



September 22, 2004

FIRST AMERICAN TITLE COMPANY

Stockton, California

Attention: Debi Barnett (209) 929-4844/ Fax: (209) 929-4850
Escrow No. 219217-DB ("*Escrow*")

Re: Agreement of Sale of Real Property and Joint Escrow Instructions

Buyer: CITY OF LODI, a Municipal Corporation

Seller: FCB BUILDING PARTNERS I, L.P., a California limited partnership

Dear Ms. Barnett :

The **CITY OF LODI**, a Municipal Corporation, hereinafter referred to as "***Buyer***," and **FCB BUILDING PARTNERS I, L.P.**, a California limited partnership, hereinafter referred to as "***Seller***," have jointly executed this document, which is both an agreement for the sale of the hereinafter described real property and instructions to **FIRST AMERICAN TITLE COMPANY** ("***Escrow Holder***") for the completion of the transfer and conveyance of real property described below (hereinafter "***Agreement***"). The terms and conditions of the Agreement are as follows:

1. Transaction: Buyer and Seller previously entered into a document entitled "Agreement" which was executed by Buyer on December 24 and 27, 2002, and by Seller on December 10, 2002 (the "***Park Site Contract***"). Pursuant to the Park Site Contract, Buyer and Seller agreed to enter into this Agreement whereby Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, the Property, as defined below, upon the terms and conditions of this Agreement.

2. Property to be Sold: The real property to be sold, transferred and conveyed shall consist of approximately 2.99 acres located generally south of Millbrook Drive, City of Lodi, San Joaquin County ("***County***"), California, and shown as parcel A on the subdivision map entitled Tract 3272, Century Meadows Two, Unit No. 4, recorded on December 30, 2002 in Book 37 of Maps, page 83 (the "***Property***") and park improvements as defined in Improvement Plan Nos. 004D021-1 through 004D021-10 and as generally presented on Exhibit A (the "***Improvements***"). Prior to closing, the Property shall be improved as described in paragraph 5.A., below.

3. Payment: The consideration to be delivered to Seller by Buyer for the Property shall be park fee credits in the amount of One Million, Sixteen Thousand, Five Hundred Fifty Three Dollars (\$1,016,553.00) (the "***Fee Credits***") as more fully described in paragraph 5.B., below and as shown on Exhibit B..

4. Close of Escrow: Conveyance of legal title by recordation of a grant deed for the Property as required by this Agreement (herein "***Close of Escrow***" or "***Closing***") shall occur on or before April 1, 2005.

5. Conditions Precedent to Close of Escrow: This Agreement, consummation of the transaction herein contemplated, the respective rights and obligations of the parties hereto, and the Close of Escrow are subject to and contingent upon the good faith satisfaction and/or completion of each of the following conditions precedent (the "***Conditions Precedent***"), or the written waiver thereof, by Buyer or

Seller as specified below.

A. Completion of Improvements: On or before Closing, Seller shall have completed construction of the improvements as described on **Exhibit A**. In the event the cost to complete the improvements differs from the amounts set forth on **Exhibit B** (and in the event that difference is reasonable and necessary) as determined by the City Engineer, the amount of the Fee Credits shall be increased or decreased by the same amount. Buyer shall be deemed to have accepted all improvements at the Close of Escrow. Seller represents and warrants that all improvements shall be or have been performed in a workman like manner and comply with the plans and specifications set forth in City of Lodi Drawing Nos. 004D021-1 through 004D021-10. This representation and warrant shall survive the close of escrow.

B. Fee Credits: On or before Closing, Buyer shall deliver to Seller a certificate (the "**Fee Credits Certificate**") entitling Seller, and its successors and assigns, to a "dollar for dollar" credit against City of Lodi Parks and Recreation Development Impact Fees payable upon approval of an Improvement Agreement or Subdivision final map for filing by the Lodi City Council. The calculation of the Parks and Recreation Development Impact Fee Credit shall be based upon the fee in effect at the time of execution of this Agreement. Following the Close of Escrow, Seller and its successors and assigns upon presentation to the City of Lodi of the Fee Credits Certificate or a written assignment of any portion thereof shall have the right to a "dollar for dollar" credit against any fees otherwise payable upon issuance of a building permit or in accordance with a subdivision agreement between Buyer and Seller. Buyer and Seller agree to keep a joint accounting of the used and unused Fee Credits. Upon written request of Seller, Buyer agrees to provide Seller with an accounting showing the total Fee Credits, the date and amount for any Fee Credits that have been redeemed, and the lots for which the Fee Credits were used. Upon request of Seller, Buyer agrees to confirm, in writing, that all of the Fee Credits have been used and that the Fee Credits Certificate has been fully redeemed.

6. Title:

A. Condition of Title. Fee title to the Property is to be conveyed to Buyer free and clear of all liens and encumbrances excepting only exceptions _____ as shown on the Preliminary Report of Title dated _____, 2004 and issued by Escrow Holder.

B. Failure of Title. If Seller, after using reasonable efforts, notifies Buyer that it is unable to convey fee title to Buyer as provided in this paragraph 6, Buyer, by written notice to Seller, as Buyer's sole remedy, shall have the right to elect to either: (i) terminate this Agreement in which case this Agreement shall be null and void without liability of any nature to any party; or (ii) without adjustment of the Purchase Price for any damages and with Seller released from any liability because of such defect, accept and take all such title or interest to the Property or otherwise as Seller has or can convey

7. Prorations: All non-delinquent general and special property taxes, assessments, and maintenance charges of the Property and assessments and levies which are or may become a lien against the Property are to be prorated in cash or readily available funds as of Close of Escrow based on the most recent property tax bill. Reassessments and escaped assessments attributable to the period prior to the Close of Escrow and supplemental taxes arising out of transfers or conveyances of the Property prior to the Close of Escrow shall be paid by Seller.

8. Costs and Expenses:

A. Seller. Seller shall pay one-half (1/2) of the Escrow and recording fees.

B. Buyer. Buyer shall pay one-half (½) of the Escrow and recording fees and the premium for any title insurance or endorsement Buyer may request.

9. Notices: Any notices and demands as required by this Agreement and Escrow Holder shall be given in writing, delivered personally, or by United States mail registered or certified, postage prepaid, return receipt requested, or by overnight mail delivery, or by facsimile transmission. Notice shall be considered given two (2) business days after the date stamped on the postmark if by mail; upon delivery, if by personal delivery; one (1) business day after pick-up or deposit if by an overnight mail or delivery service; or upon the next business day after transmission if by facsimile, if the original is sent by regular mail within forty-eight (48) hours, to the following addresses:

SELLER:

FCB BUILDING PARTNERS I, L.P.

3247 W. March Lane, Suite 220
Stockton, California 95219
Attention: Jim Jimison
Fax: (209) 957-3618

With a copy to:

LAW OFFICES OF MARC B. ROBINSON

3255 W. March Lane, Suite 230
Stockton, California 95219
Attention: Marc B. Robinson, Esq.
Fax: (209) 954-9091

BUYER:

CITY OF LODI

221 W. Pine Street
P.O. Box 3006
Lodi, California 95241-1910
Attention: Richard Prima
Fax: (209) 333-6706

10. Documents to be Delivered to Escrow Holder: For use in connection with this Escrow, and subject to the terms and conditions thereof, and of the instructions hereinafter set forth:

A. Seller shall deliver to Escrow Holder:

- (1) A grant deed for the Property, properly executed and notarized;
- (2) A duly executed affidavit in the form required by law that Seller is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code, also known as The Foreign Investment in Real Property Tax Act, and an equivalent California form (collectively the “***FIRPTA Statement***”);
- (3) Any and all other documents reasonably required for the Close of Escrow;
- (4) Cash for other obligations to be paid by Seller pursuant to this Agreement.

B. Buyer shall deliver to Escrow Holder:

- (1) The Fee Credits Certificate;

- (2) Cash for the other obligations to be paid by Buyer pursuant to this Agreement;
- (3) Approved Resolution of the City of Lodi accepting the improvements.

11. **Instructions:** On or before the date set for the Close of Escrow and when:

- A. You hold for recording and delivery to Buyer, Seller's grant deed;
- B. You hold for Seller's account, the Fee Credits Certificate;
- C. You hold for delivery to Buyer the FIRPTA Statements;

Then you are authorized to:

- D. Record and deliver to Buyer, Seller's grant deed to the Property;
- E. Deliver to Seller the Fee Credits Certificate;
- F. Deliver to Buyer the FIRPTA Statement;
- G. Pay all costs and expenses as authorized by these instructions and charge each party's account for such costs and expenses pursuant to paragraph 8; and,
- H. Deliver to each party your itemized settlement statement and statement of costs charged to each party's account.

12. **Time:** Time is of the essence in connection with this Agreement, and failure to timely comply with the provisions hereof shall be a material breach of this Agreement.

13. **Assignment:** Either party may assign its rights and duties hereunder to an affiliated or related entity. All other assignments shall be subject to the other party's consent, which consent may not be unreasonably withheld. No assignment shall relieve the assigning party of its obligations hereunder.

MATTERS OF AGREEMENT

14. **No Real Estate Commission:** Buyer and Seller acknowledge that no real estate commission or finder's fee is due any broker or agent in connection with this transaction. In the event of any claim for any brokers' or finders' fee or commission in connection with the execution or consummation of this Agreement, Seller shall indemnify, hold harmless, and defend Buyer from and against any such claim based upon a statement, representation, or agreement by Seller, and Buyer shall indemnify, hold harmless and defend Seller from and against any claim for any such claim based upon a statement, representation, or agreement made by Buyer.

15. **"AS IS."** Buyer is capable of ascertaining and analyzing all facts material to its decision to purchase the Property. Buyer acknowledges that the Escrow period will give Buyer the opportunity to conduct such investigations and evaluations as Buyer deems necessary. Buyer agrees and acknowledges that except as expressly set forth in this Agreement, neither Seller, nor anyone on Seller's behalf has made any representation or warranty respecting the Property, or otherwise, in connection with the transaction contemplated herein. Without limiting the generality of the foregoing, Buyer hereby acknowledges that it will be purchasing the Property in an "AS-IS" condition, and further that:

- A. Buyer has made or will make Buyer's own independent investigation

respecting the Property and Project and all other aspects of this transaction, and Buyer is relying entirely thereon and on the advice of Buyer's consultants in entering into this Agreement.

B. Buyer has reviewed or will review all instruments, records, and documents which Buyer deems appropriate or advisable to review in connection with this transaction, and Buyer has determined or will determine prior to the Close of Escrow that the information and data contained therein or evidenced thereby is satisfactory to Buyer.

C. Buyer acknowledges that Seller has not made any representations or warranties, express or implied, of any kind or nature in connection with soils or physical conditions of the Property, Project, or any other property thereabouts, or the use, presence, generation, or disposal on the Property, Project, or any other property thereabouts of any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials or conditions.

BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT. BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, ANY PROSPECTUS DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER, THE MANAGERS OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT THOSE SPECIFICALLY SET FORTH IN THIS AGREEMENT. BUYER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD "AS-IS."

BUYER ACKNOWLEDGES RECEIPT OF VARIOUS DOCUMENTS RELATING TO THE PROPERTY, AND REPRESENTS TO SELLER THAT BUYER HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, BUYER SHALL, EXCEPT FOR THOSE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS WHICH SURVIVE THE CLOSING, ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS, AND BUYER, UPON CLOSING, SHALL, EXCEPT FOR THOSE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS WHICH SURVIVE THE CLOSING, BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY AND EVERY KIND OR CHARACTER, (COLLECTIVELY

“**CLAIMS**”) KNOWN OR UNKNOWN, WHICH BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER’S OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY. IN CONNECTION THEREWITH, BUYER EXPRESSLY WAIVES ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES THAT:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

THE PROVISIONS OF THIS SECTION SHALL SURVIVE CLOSING OR ANY TERMINATION OF THIS AGREEMENT.

16. General Provisions:

A. Possession. Buyer shall be entitled to possession of the Property upon the Close of Escrow.

B. Interpretation. This Agreement shall be construed as a whole and in accordance with the fair meaning of its language, and shall not be construed for or against either party. Each party has cooperated and participated in the drafting and preparation of this Agreement, and therefore, in any construction to be made of this Agreement or any of its terms, both parties shall be construed to be equally responsible for the drafting and preparation of the same. Captions are for convenience and shall not be used in construing meaning.

C. Inurement. This Agreement and its terms shall inure to the benefit of and be binding upon the parties, their permitted assigns, and other successors in interest.

D. Entire Agreement. This Agreement supersedes any prior agreement or correspondence, including correspondence with brokers, and contains the entire agreement of the parties on the matters covered. No other agreement, statement, or promise made by any party to any employee, officer, or agent of a party to this Agreement, or any other person, that is not in writing and signed by all the parties to this Agreement shall be binding upon them. Any amendment, including oral modifications, must be reduced to writing and signed by the party to be charged to be effective.

E. Attorneys’ Fees. In the event any action is filed, as between Buyer and Seller, the prevailing party therein shall be entitled to recover, as an element of its costs of suit and not as damages, reasonable attorneys’ fees and costs from the party not prevailing. The prevailing party shall be the party who is entitled to costs of suit, whether or not the suit or award proceeds to final judgment.

F. No Recordation. This Agreement shall not be recorded.

G. Waiver of Covenants, Conditions, Remedy. The waiver by one party of the performance of any covenants, conditions, or promises shall not invalidate this Agreement, nor shall it be considered a waiver by it of any other covenant, condition, or promise. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided

in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions in this Agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

H. Computation of Time. Any time period to be computed pursuant to this Agreement shall be computed by excluding the first day and including the last. If the last day falls on a Saturday, Sunday, or holiday, the last day shall be extended until the next business day that the Escrow Holder is open for business, but in no case will the extension be for more than three (3) days.

I. Survivability of this Agreement. Except for those provisions specifically and expressly stated as surviving the Close of Escrow, the Agreement shall terminate upon the Close of Escrow, the delivery of the grant deed by Seller, and the receipt of consideration.

J. Partial Invalidity. If any term, covenant, or provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

K. Applicable Law/Venue. This Agreement shall be governed, interpreted, and construed according to the laws of the State of California, and any arbitration or legal proceeding shall be undertaken in San Joaquin County, California.

L. Damage or Destruction. If damage or destruction to a substantial portion of the Property occurs prior to Closing, Seller shall give Buyer written notice of such damage or destruction, and Buyer shall have the option, exercisable within ten (10) business days thereafter either to (i) terminate this Agreement, in which case Escrow Holder or Seller, as the case may be, shall immediately return all documents, instruments and monies to the party which deposited same in respect of the Closing, or (ii) accept the Property in its condition at that time, and receive an assignment of all of Seller's rights to any insurance proceeds payable by reason of such damage or destruction, with a commensurate reduction in the Purchase Price. If Buyer elects to proceed under clause (ii) above Seller shall not compromise, settle or adjust any such insurance claims without Buyer's prior written consent. In either event, Seller shall have no liability to Buyer or any other person or entity on account of such damage or destruction. For purposes of this paragraph a substantial portion shall mean twenty percent (20%) or more of the Property's acreage.

M. Condemnation. If prior to the Closing a substantial portion of the Property is subject to an actual or threatened taking by a public authority, by the power of eminent domain or otherwise, Buyer shall have the right, exercisable by giving written notice to Seller within ten (10) business days after Buyer's receipt of written notice of such actual or threatened taking, either to (i) terminate this Agreement, in which case Escrow Holder or Seller, as the case may be, shall immediately return all documents, instruments and monies to the party which deposited same in respect of the Closing, or (ii) to accept the Property in its then condition, and to receive an assignment of all of Seller's rights to any condemnation award payable by reason of such taking. If Buyer elects to proceed under clause (ii) above, Seller shall not compromise, settle or adjust any claims to such award without Buyer's prior written consent. In either event, Seller shall have no liability to Buyer or any other person or entity on account of such taking. For purposes of this paragraph a substantial portion shall mean twenty percent (20%) or more of the Property's acreage.

N. Excusable Delay. The obligations of the parties pursuant to this Agreement shall in no way be effected, impaired or excused because of a delay within such party's reasonable control; provided, however, in the event of any interruption or interference resulting from strikes, fire, flood, acts of God, war, weather, sabotage, riots or material shortages, or governmental action or inaction which prohibits, limits, or delays entitlement, development, or construction of the Property or Project or

any act or event reasonably required under this Agreement (“**Excusable Delay**”), then the time period for completion of the obligations shall be extended by the length of time that the Excusable Delay was in existence.

O. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached there from without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto

except having additional signature pages executed by the other party. Counterparts may be delivered by facsimile provided that original executed counterparts are delivered to the recipient on the next business day following the facsimile transmission.

P. Relationship of Parties. The parties agree that their relationship is that of Seller and Buyer, respectively, and that nothing contained herein shall make either party the agent or fiduciary of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form of business organization between the parties, including without limitation a joint venture or partnership, nor is either party granted any right or authority to assume or create any obligation or responsibility on behalf of the other party, nor shall either party be in any way liable for any debt of the other.

Q. Remedies For Buyer Default. Buyer understands and agrees that but for Buyer’s agreement to purchase the Property under the terms of this Agreement Seller would not construct the improvements on the Property as described in paragraph 5.A. above. Therefore, in the event Buyer fails to purchase the Property as provided in this Agreement Seller shall have the right to seek specific performance, money damages, or any other remedy available to Seller at law or equity to fully compensate Seller for all damages, consequential or otherwise, incurred by Seller as the result of Buyer’s failure hereunder. In addition, Buyer further agrees that if Buyer does not complete the purchase of the Property as provided herein, Buyer shall grant Seller, at Seller’s election, all permits and approvals reasonable or necessary for Seller to subdivide the Property and construct and sell single family homes thereon.

R. Effective Date. The term “**Effective Date**” as used herein shall refer to the date this Agreement has been executed by both parties.

SELLER: **FCB BUILDING PARTNERS I, L.P.**
a California limited partnership

By: _____

Its: _____

Date: _____

BUYER: **CITY OF LODI**
a _____

By: _____

Its: _____

Date: _____

ACKNOWLEDGMENT AND ACCEPTANCE

Receipt of an original of the foregoing Escrow instructions and the enclosures listed therein is acknowledged, and we agree to act as Escrow Holder under and pursuant to the terms and conditions of said instructions.

Dated: _____

FIRST AMERICAN TITLE COMPANY

By: _____

Its: Authorized Officer

LIST OF EXHIBITS

Exhibit A – Schedule of Improvements

EXHIBIT A

EXHIBIT A

SCHEDULE OF IMPROVEMENTS

ATTACHMENT C

CENTURY MEADOWS PARK Summary of Costs

<u>Item</u>	<u>Unit</u>	<u>Quantity</u>	<u>Price</u>	<u>Total</u>	<u>Notes</u>
<u>Land Cost</u>					
Park Site	ACRE	2.99	\$150,000.00	\$448,500.00	
Property Taxes	ACRE	2.99	4,500.00	13,455.00	(1)
Interest	ACRE	2.99	23,625.00	70,638.75	(2)
Maintenance	ACRE	2.99	6,000.00	17,940.00	(3)
Escrow Fee	LS	1	412.50	412.50	
Deed Preparation	LS	1	30.00	30.00	
Recording Fees	LS	1	10.00	10.00	
Transfer Tax	LS	1	452.56	452.56	
Owner's Policy	LS	1	523.88	523.88	
Subtotal				\$551,962.69	
<u>Construction Costs</u>					
Clearing & Grubbing	ACRE	2	\$2,700.00	\$5,400.00	
Grading (Rough & Finish)	SF	117,520	0.24	28,204.80	
4" Sewer	LF	310	22.50	6,975.00	
Park Light Poles & Fixtures	EA	4	9,500.00	38,000.00	
Concrete Flatwork/Misc. Concrete	SF/LF	7,732	5.68	43,917.76	
Concrete Basketball Pad w/Footing	SF	4,665	6.00	27,990.00	
Shade Structure Slabs/Footings	EA	2	25,000.00	50,000.00	
6' Chain Link w/24" Concrete Strip	LF	915	34.00	31,110.00	
6' Chain Link w/PVC slats	LF	79	39.00	3,081.00	
Poured-in-Place Playground Surfacing	SF	3,830	17.00	65,110.00	
Playground Equipment	LS	1	55,500.00	55,500.00	
Park Benches	EA	6	1,150.00	6,900.00	
Trash Receptacles	EA	3	1,100.00	3,300.00	
Drinking Fountain	EA	1	4,700.00	4,700.00	
Picnic Tables	EA	4	2,500.00	10,000.00	
Large Group Barbeques	EA	2	1,600.00	3,200.00	
Automatic Irrigation System	LS	1	78,500.00	78,500.00	
Temporary Fencing	LS	1	3,200.00	3,200.00	
Subtotal				\$465,088.56	
<u>Other Costs</u>					
Construction Administration (by Developer)	LS	1	\$0.00	\$0.00	
Survey (by City)	LS	1	0.00	0.00	
Testing (by City)	LS	1	0.00	0.00	
Contingency	LS	1	23,000.00	23,000.00	
Subtotal				\$23,000.00	
GRAND TOTAL				\$1,040,051.25	

Notes

- (1) Taxes computed as 1% of the purchase price per year for 3 years.
- (2) Interest computed as 5.25% of the purchase price per year for 3 years.
- (3) Maintenance computed as approximately 4.5 cents per square foot per year for 3 years.

RESOLUTION NO. 2004-240

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY
MANAGER TO EXECUTE PARK PURCHASE AND CONSTRUCTION
AGREEMENT FOR THE ACQUISITION OF PARK SITE AND
CONSTRUCTION OF THE PARK IMPROVEMENTS FOR CENTURY
MEADOWS PARK, AND FURTHER APPROPRIATE FUNDS

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute the Park Purchase and Construction Agreement with FCB Building Partners I, LP, for the acquisition of the park site and construction of the park improvements for Century Meadows Park; and

BE IT FURTHER RESOLVED that the Lodi City Council hereby appropriates \$24,000 from the Parks and Recreation Impact Mitigation Fee Fund for this project.

Dated: November 3, 2004

=====

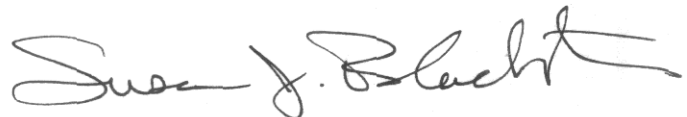
I hereby certify that Resolution No. 2004-240 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 3, 2004, by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Howard, Land, and
Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Beckman

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk

CITY COUNCIL

LARRY D. HANSEN, Mayor
JOHN BECKMAN
Mayor Pro Tempore
SUSAN HITCHCOCK
EMILY HOWARD
KEITH LAND

CITY OF LODI
PUBLIC WORKS DEPARTMENT

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6706
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EMAIL pwdept@lodi.gov
<http://www.lodi.gov>

JANET S. KEETER
Interim City Manager
SUSAN J. BLACKSTON
City Clerk
D. STEVEN SCHWABAUER
City Attorney
RICHARD C. PRIMA, JR.
Public Works Director

October 28, 2004

FCB Building Partners I, LP
c/o Frontiers
3247 W. March Lane, Ste. 220
Stockton, CA 95219

SUBJECT: Adopt Resolution Authorizing City Manager to Execute Park Purchase and Construction Agreement with FCB Building Partners I, LP, for the Acquisition of the Park Site and Construction of the Park Improvements for Century Meadows Park and Appropriate Funds (\$24,000)

Enclosed is a copy of background information on an item on the City Council agenda of Wednesday, November 3, 2004. The meeting will be held at 7 p.m. in the City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the consent calendar and is usually not discussed unless a Council Member requests discussion. The public is given an opportunity to address items on the consent calendar at the appropriate time.

If you wish to write to the City Council, please address your letter to City Council, City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the mail. Or, you may hand-deliver the letter to City Hall, 221 West Pine Street.

If you wish to address the Council at the Council Meeting, be sure to fill out a speaker's card (available at the Carnegie Forum immediately prior to the start of the meeting) and give it to the City Clerk. If you have any questions about communicating with the Council, please contact Susan Blackston, City Clerk, at 333-6702.

If you have any questions about the item itself, please call Wally Sandelin, City Engineer, at 333-6709.



for: Richard C. Prima, Jr.
Public Works Director

RCP/pmf

Enclosure

cc: City Clerk